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FAX COVER SHEET

TO: Permanent Missions of Member States to the United Nations

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DATE: Friday 23 January 2009

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This material is distributed by Independent Diplomat Inc. on behalf of the Government of the Saharawi Arab Democratic Republic (SADR). Additional information is available at the Department of Justice, Washington, D.C.

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FRENTE POLISARIO
COMITE DE RELACIONES
EXTERIORES



الهيئة الشعبية
 لتحرير
 الساقية الحمراء وواادي الذهب
 لجنة العلاقات الخارجية

22 January 2009

The Representative of the Frente POLISARIO to the United Nations presents his compliments to the Permanent Missions of Member States to the United Nations, and has the honour to refer to the recent adoption by the National Council of the Saharawi Arab Democratic Republic of 'Law No. 03/2009 of 21 January 2009 Establishing the Maritime Zones of the Saharawi Arab Democratic Republic'. A copy of the law is enclosed herewith.

The Saharawi Arab Democratic Republic (SADR) was proclaimed on 27 February 1976 as the sovereign authority over the territory of Western Sahara. The SADR was admitted as a member of the Organization of African Unity in 1982, and is a full founding member of the African Union.

The aforementioned Law No. 03/2009 entered into force on 21 January 2009, and has the effect of establishing and defining with legal clarity the maritime zones of the SADR in accordance with international law. The legislation includes the declaration of a 200-nautical mile Exclusive Economic Zone within which the SADR has exclusive sovereign rights for the purpose of exploring, exploiting, conserving and managing the natural resources of the seabed, subsoil and superjacent water column.

The Law No. 03/2009 indicates the commitment of the SADR to adhere to the 1982 United Nations Convention on the Law of the Sea at the earliest possible date. In this regard, the aforementioned declaration reflects the desire of the Government of the SADR to ensure that, consistent with Resolution III of the Third United Nations Conference on the Law of the Sea, the 'provisions concerning rights and interests under the Convention shall be implemented for the benefit of the people of the territory with a view to promoting their well-being and development' (Resolution III(1)(a), Annex I of the Final Act of the Third United Nations Conference on the Law of the Sea).

The SADR legislation also provides that, where the maritime entitlements of the SADR overlap with the maritime entitlements of neighbouring states, the SADR may negotiate and conclude agreements with neighbouring states regarding the delimitation of its maritime boundaries, in accordance with international law.

In pursuance of the sovereign rights confirmed by the 'Law No. 03/2009', the SADR concluded in 2005 a successful round of contracts for the exploration of a number of licence areas offshore from the territory of Western Sahara. The SADR launched a second licence offering in February 2008, which is currently scheduled to close in the first half of 2009. Further information is available at: <http://www.sadroitlandgas.com>.

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The Government of the SADR considers illegal any activities related to the exploration or exploitation of the natural resources of the SADR territorial sea, exclusive economic zone or continental shelf conducted without its express authorization. Similarly, States exercising their rights of navigation, overflight and of the laying of submarine cables and pipelines should do so having due regard to the rights and duties of the SADR as the coastal State, including compliance with its relevant laws and regulations.

The Government of the SADR reserves the right to pursue legal action in respect of any such unauthorized activities, and is considering options for seeking a judicial advisory opinion on the legality of international arrangements and transactions purporting to deal with the natural resources of the SADR, including those concluded between the Kingdom of Morocco and any third parties. As confirmed recently by Ambassador Hans Corell, former United Nations Under-Secretary-General for Legal Affairs and Legal Counsel (1994 – 2004), any such agreement or arrangement in the absence of the authorization of the representatives of the people of Western Sahara would violate international law. This includes the 2005 Fisheries Partnership Agreement between the European Communities and the Kingdom of Morocco (adopted by Council Regulation EC No 764/2006 of 22 May 2006), which purports to grant to EU-flagged vessels rights to fish in waters under the jurisdiction of the SADR.

The Representative of the Frente POLISARIO has the honour to renew to the Permanent Missions of Member States to the United Nations the assurances of his highest consideration. ✍



LAW NO. 03/2009 OF 21 JANUARY 2009
ESTABLISHING THE MARITIME ZONES OF THE
SAHARAWI ARAB DEMOCRATIC REPUBLIC

Whereas the Constitution of the Saharawi Arab Democratic Republic provides that the State shall exercise full sovereignty over its territory, including its territorial waters;

Whereas the Saharawi Arab Democratic Republic wishes to update its domestic law regarding sovereign rights, jurisdiction and duties in the State's exclusive economic zone and continental shelf;

Whereas the ocean and its natural living and non-living resources offer significant opportunities for economic diversification, sustainable development and the generation of wealth for the benefit of all the citizens of the Saharawi Arab Democratic Republic, and in particular for coastal communities;

Considering the need to safeguard the rights and fundamental interests of the nation with regard to the living and non-living resources in the waters off the coast of the Saharawi Arab Democratic Republic;

Considering the Saharawi Arab Democratic Republic is entitled to exercise the rights and fulfil the duties of a coastal state in accordance with international law, as set forth in the United Nations Convention on the Law of the Sea, 1982 (hereinafter "the Convention");

Considering the Saharawi Arab Democratic Republic's commitment to adhere to the Convention at the earliest possible date;

For these reasons, the Saharawi Arab Democratic Republic establishes and defines its maritime zones as follows:

SECTION I
INTERNAL WATERS AND TERRITORIAL SEA

Article 1
Territorial Sea

The territorial sea of the Saharawi Arab Democratic Republic comprises those areas of the sea having as their inner limit the baselines described in Article 2 of this Law and as their outer limit a line established seaward from those baselines every point of which is at a distance of twelve miles from the nearest point of the baseline.

Article 2

Baselines

1. The normal baseline is the low-water line along the coast of the Saharawi Arab Democratic Republic.
2. If it deems it appropriate, the Saharawi Arab Democratic Republic may define straight baselines for measuring the breadth of the territorial sea in accordance with the applicable principles of international law.
3. Baselines across the mouths of rivers and bays may be defined in accordance with the applicable principles of international law.

Article 3

Internal Waters

1. The internal waters of the Saharawi Arab Democratic Republic include those areas of the sea on the landward side of the baselines from which the breadth of the territorial sea is measured.
2. No foreign vessel shall enter the internal waters except with prior authorization from the Government of the Saharawi Arab Democratic Republic in accordance with its laws and regulations.

Article 4

Sovereignty

The Saharawi Arab Democratic Republic exercises sovereignty in its internal waters and territorial sea, which is understood to include:

- a) the mass of water;
- b) the superjacent airspace;
- c) the corresponding seabed, soil and subsoil; and
- d) the living and non-living resources.

Article 5

Innocent Passage

1. The vessels of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea of the Saharawi Arab Democratic Republic, in accordance with international law and with such laws and regulations as the Saharawi Arab Democratic Republic may adopt.
2. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the Saharawi Arab Democratic Republic.

3. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the Saharawi Arab Democratic Republic if while in the territorial sea it engages in any of the following activities:

- a) Any threat or use of force against the sovereignty, territorial integrity or political independence of the Saharawi Arab Democratic Republic, or in any other manner in violation of the principles of international law;
- b) Any exercise or practice with weapons of any kind;
- c) Any act of propaganda or any act aimed at collecting information to the prejudice of the defence or security of the Saharawi Arab Democratic Republic;
- d) The launching, landing or taking on board of any aircraft or military device;
- e) The loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the Saharawi Arab Democratic Republic;
- f) Any act of serious international pollution contrary to international law;
- g) The carrying out of any fishing activities, research activities or hydrographic surveys without the corresponding authorization or license;
- h) Any act aimed at interfering with any systems of communication or any other facilities or installations of the Saharawi Arab Democratic Republic; or
- i) Any other activity not having a direct bearing on passage.

4. Foreign nuclear-powered ships and ships carrying nuclear substances or radioactive products or other inherently dangerous or noxious substances shall notify in advance the competent authorities in the Saharawi Arab Democratic Republic of their entry and passage through the territorial sea.

5. In the territorial sea, submarines and other foreign underwater vehicles are required to navigate on the surface and to show their flag.

6. The Government of the Saharawi Arab Democratic Republic may, by order published in the official Gazette, suspend temporarily the right of innocent passage in such areas of the territorial sea as are specified in the Order if such suspension is essential for the protection of the security of the Saharawi Arab Democratic Republic.

SECTION II CONTIGUOUS ZONE

Article 6 Contiguous Zone

1. The contiguous zone is comprised of those areas of the sea beyond and adjacent to the territorial sea and having as their seaward limit a line every point of which is twenty-four nautical miles from the nearest point of the baseline used to measure the breadth of the territorial sea.

2. In the contiguous zone, the Saharawi Arab Democratic Republic shall exercise the control necessary to:

- a) Prevent infringement of its security, customs, fiscal, immigration, or sanitary laws and regulations within its land territory, internal waters or territorial sea; and
- b) Punish infringement of the above laws and regulations committed within the land territory of the State, its internal waters or territorial sea.

SECTION III EXCLUSIVE ECONOMIC ZONE

Article 7 Exclusive Economic Zone

An exclusive economic zone is hereby established beyond and adjacent to the territorial sea, out to a distance of 200 nautical miles from the baselines used to measure the breadth of the territorial sea.

Article 8 Rights and Obligations

1. In the exclusive economic zone, the Saharawi Arab Democratic Republic has sovereign rights for the purpose of exploring, exploiting, conserving and managing the natural resources, whether living or non-living, of the sea-bed and subsoil and the superjacent waters, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from water, currents and winds.
2. In the exclusive economic zone, the Saharawi Arab Democratic Republic has exclusive jurisdiction with regard to:
 - a) Marine scientific research;
 - b) The establishment and use of artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, drugs, safety and immigration laws;
 - c) The protection and preservation of the environment;
 - d) Punishing infringements of national laws and regulations pertaining to the above matters, chiefly with regard to fishing and extraction of any other natural resource, marine scientific research and pollution prevention and control; and
 - e) Any other matters which the Government of the Saharawi Arab Democratic Republic may establish, in accordance with international law.
3. There shall be no exploration or economic exploitation of the natural resources of the exclusive economic zone by persons or vessels other than nationals of the Saharawi Arab Democratic Republic, and no scientific research may be conducted within the zone and no artificial island, installation or structure may be constructed, operated or used within the zone, for any of the foregoing purposes, unless such activity has been authorized by the Government of the Saharawi Arab Democratic Republic.

SECTION IV CONTINENTAL SHELF

Article 9 Continental Shelf

1. The continental shelf of the Saharawi Arab Democratic Republic comprises the seabed and subsoil of the submarine areas adjacent to and beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.
2. The Saharawi Arab Democratic Republic shall exercise over its continental shelf sovereign rights for the purposes of exploring and exploiting its natural resources. These rights shall be exclusive to the Saharawi Arab Democratic Republic in the sense that no one shall exercise them without its express consent. These rights do not depend on occupation, effective or notional, or on any express proclamation.
3. The natural resources referred to in the preceding paragraph consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, meaning the organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.
4. There shall be no establishment or use of artificial islands, installations or other structures for the purpose of exploring and exploiting the natural resources of the continental shelf, or for any other purpose, unless such activity has been authorized by the Government of the Saharawi Arab Democratic Republic. The Saharawi Arab Democratic Republic exercises jurisdiction over such artificial islands, installations and structures, including jurisdiction with respect to customs, tax, health and immigration laws and safety laws and regulations.

SECTION V GENERAL PROVISIONS

Article 10 Additional Rights under International Law

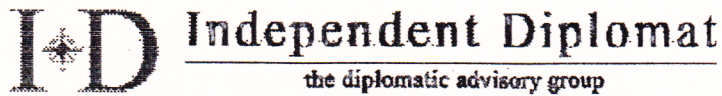
In addition to matters provided in this Law, the Saharawi Arab Democratic Republic shall enjoy all other rights and jurisdiction States enjoy under the international law as regards maritime zones.

Article 11
Delimitation

Where the maritime entitlements of the Saharawi Arab Democratic Republic overlap with the maritime entitlements of neighbouring states, the Saharawi Arab Democratic Republic may negotiate and conclude agreements with neighbouring states regarding the delimitation of its maritime boundaries.

Article 12
Final Provisions

1. All legislation conflicting with this Law is hereby revoked.
2. This Law shall enter into force on the date of its publication in the official Gazette.



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- c) the corresponding seabed, soil and subsoil; and
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Article 5 Innocent Passage

1. The vessels of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea of the Saharawi Arab Democratic Republic, in accordance with international law and with such laws and regulations as the Saharawi Arab Democratic Republic may adopt.
2. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the Saharawi Arab Democratic Republic.

3. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the Saharawi Arab Democratic Republic if while in the territorial sea it engages in any of the following activities:

- a) Any threat or use of force against the sovereignty, territorial integrity or political independence of the Saharawi Arab Democratic Republic, or in any other manner in violation of the principles of international law;
- b) Any exercise or practice with weapons of any kind;
- c) Any act of propaganda or any act aimed at collecting information to the prejudice of the defence or security of the Saharawi Arab Democratic Republic;
- d) The launching, landing or taking on board of any aircraft or military device;
- e) The loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the Saharawi Arab Democratic Republic;
- f) Any act of serious international pollution contrary to international law;
- g) The carrying out of any fishing activities, research activities or hydrographic surveys without the corresponding authorization or license;
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5. In the territorial sea, submarines and other foreign underwater vehicles are required to navigate on the surface and to show their flag.

6. The Government of the Saharawi Arab Democratic Republic may, by order published in the official Gazette, suspend temporarily the right of innocent passage in such areas of the territorial sea as are specified in the Order if such suspension is essential for the protection of the security of the Saharawi Arab Democratic Republic.

SECTION II CONTIGUOUS ZONE

Article 6 Contiguous Zone

1. The contiguous zone is comprised of those areas of the sea beyond and adjacent to the territorial sea and having as their seaward limit a line every point of which is twenty-four nautical miles from the nearest point of the baseline used to measure the breadth of the territorial sea.

2. In the contiguous zone, the Saharawi Arab Democratic Republic shall exercise the control necessary to:

- a) Prevent infringement of its security, customs, fiscal, immigration, or sanitary laws and regulations within its land territory, internal waters or territorial sea; and
- b) Punish infringement of the above laws and regulations committed within the land territory of the State, its internal waters or territorial sea.

SECTION III EXCLUSIVE ECONOMIC ZONE

Article 7 Exclusive Economic Zone

An exclusive economic zone is hereby established beyond and adjacent to the territorial sea, out to a distance of 200 nautical miles from the baselines used to measure the breadth of the territorial sea.

Article 8 Rights and Obligations

1. In the exclusive economic zone, the Saharawi Arab Democratic Republic has sovereign rights for the purpose of exploring, exploiting, conserving and managing the natural resources, whether living or non-living, of the sea-bed and subsoil and the superjacent waters, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from water, currents and winds.

2. In the exclusive economic zone, the Saharawi Arab Democratic Republic has exclusive jurisdiction with regard to:

- a) Marine scientific research;
- b) The establishment and use of artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, drugs, safety and immigration laws;
- c) The protection and preservation of the environment;
- d) Punishing infringements of national laws and regulations pertaining to the above matters, chiefly with regard to fishing and extraction of any other natural resource, marine scientific research and pollution prevention and control; and
- e) Any other matters which the Government of the Saharawi Arab Democratic Republic may establish, in accordance with international law.

3. There shall be no exploration or economic exploitation of the natural resources of the exclusive economic zone by persons or vessels other than nationals of the Saharawi Arab Democratic Republic, and no scientific research may be conducted within the zone and no artificial island, installation or structure may be constructed, operated or used within the zone, for any of the foregoing purposes, unless such activity has been authorized by the Government of the Saharawi Arab Democratic Republic.

SECTION IV CONTINENTAL SHELF

Article 9 Continental Shelf

1. The continental shelf of the Saharawi Arab Democratic Republic comprises the seabed and subsoil of the submarine areas adjacent to and beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.
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4. There shall be no establishment or use of artificial islands, installations or other structures for the purpose of exploring and exploiting the natural resources of the continental shelf, or for any other purpose, unless such activity has been authorized by the Government of the Saharawi Arab Democratic Republic. The Saharawi Arab Democratic Republic exercises jurisdiction over such artificial islands, installations and structures, including jurisdiction with respect to customs, tax, health and immigration laws and safety laws and regulations.

SECTION V GENERAL PROVISIONS

Article 10 Additional Rights under International Law

In addition to matters provided in this Law, the Saharawi Arab Democratic Republic shall enjoy all other rights and jurisdiction States enjoy under the international law as regards maritime zones.

Article 11
Delimitation

Where the maritime entitlements of the Saharawi Arab Democratic Republic overlap with the maritime entitlements of neighbouring states, the Saharawi Arab Democratic Republic may negotiate and conclude agreements with neighbouring states regarding the delimitation of its maritime boundaries.

Article 12
Final Provisions

1. All legislation conflicting with this Law is hereby revoked.
2. This Law shall enter into force on the date of its publication in the official Gazette.



SAHARAWI ARAB DEMOCRATIC REPUBLIC

MEDIA RELEASE

Thursday 22 January 2009

WESTERN SAHARA DECLARES OFFSHORE ZONES

President Abdelaziz calls on EU to cease illegal fishing in Western Sahara's waters

The Government of Western Sahara declared an offshore exclusive economic zone on 21 January 2009, making official its exclusive rights to the oil, gas and fisheries resources offshore of the territory of Western Sahara.

The Saharawi Arab Democratic Republic (SADR) has been recognised officially by over 80 countries, and is a full founding member of the African Union.

The 21 January declaration of a 200-nautical mile Exclusive Economic Zone (EEZ) confirms the SADR's jurisdiction over its offshore fisheries and mineral and petroleum seabed resources, as provided for under the United Nations Convention on the Law of the Sea.

The EEZ also provides the legal framework for the SADR's offshore licensing regime, which is currently receiving international bids for offshore oil and gas exploration activities (see <http://www.sadroitlandgas.com> for further information).

After signing the new legislation, SADR President Mohamed Abdelaziz said: "This is an exciting moment for the Saharawi people. The EEZ declaration is an expression and exercise by the Saharawi people of their inalienable right to self-determination and permanent sovereignty over their natural resources. It is also a further step towards full statehood, and to taking control of our natural riches, which have been plundered illegally for many years by Morocco and other foreign interests".

With the passage of this legislation, the SADR has made clear its views regarding unauthorised activities in the Western Saharan EEZ. Abdelaziz said "This declaration bears out the illegality of all unauthorised natural resource-related activities conducted by Morocco and other foreign interests in Western Sahara's waters. We call on all parties to revisit immediately any agreements with Morocco that do not explicitly exclude the Western Saharan territory and its offshore areas, including the EEZ".

Abdelaziz added: "In particular, we call on the European Union to suspend immediately the 2005 EU-Morocco Fisheries Agreement in its current form, and to prevent EU vessels from encroaching upon the waters of Western Sahara. We are pursuing various legal avenues to ensure that the theft of our world class fisheries resources does not continue".

The SADR EEZ borders those of Morocco, Mauritania and the Canary Islands (Spain). The new legislation provides that where the SADR's maritime entitlements overlap with those of its neighbours, the SADR will negotiate and conclude agreements delimiting maritime boundaries, in accordance with international law.

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After signing the new legislation, SADR President Mohamed Abdelaziz said: "This is an exciting moment for the Saharawi people. The EEZ declaration is an expression and exercise by the Saharawi people of their inalienable right to self-determination and permanent sovereignty over their natural resources. It is also a further step towards full statehood, and to taking control of our natural riches, which have been plundered illegally for many years by Morocco and other foreign interests".

With the passage of this legislation, the SADR has made clear its views regarding unauthorised activities in the Western Saharan EEZ. Abdelaziz said "This declaration bears out the illegality of all unauthorised natural resource-related activities conducted by Morocco and other foreign interests in Western Sahara's waters. We call on all parties to revisit immediately any agreements with Morocco that do not explicitly exclude the Western Saharan territory and its offshore areas, including the EEZ".

Abdelaziz added: "In particular, we call on the European Union to suspend immediately the 2005 EU-Morocco Fisheries Agreement in its current form, and to prevent EU vessels from encroaching upon the waters of Western Sahara. We are pursuing various legal avenues to ensure that the theft of our world class fisheries resources does not continue".

The SADR EEZ borders those of Morocco, Mauritania and the Canary Islands (Spain). The new legislation provides that where the SADR's maritime entitlements overlap with those of its neighbours, the SADR will negotiate and conclude agreements delimiting maritime boundaries, in accordance with international law.

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The declaration on 21 January 2009 of an Exclusive Economic Zone (EEZ) by the Saharawi Arab Democratic Republic (SADR), the sovereign authority for Western Sahara, confirms its exclusive rights to the oil, gas and fisheries resources offshore of the territory of Western Sahara. Already recognized by over 80 countries, the SADR's declaration of an EEZ is a further step toward full statehood, consistent with international law.

The EEZ provides the legal framework for the SADR's offshore licensing regime, which is currently receiving international bids for offshore oil and gas exploration activities (see <http://www.sadroilandgas.com>). The declaration bears out the illegality of all natural resource-related activities in Western Sahara's waters not authorized by the SADR Government, including those undertaken by Morocco and other foreign interests. It is now recognised widely that fishing by EU vessels in Western Sahara's waters pursuant to the 2005 EU-Morocco Fisheries Partnership Agreement is in flagrant violation of international law (see below).

General background

The area widely referred to as 'Western Sahara' lies on the Atlantic coast of North-West Africa, bordered by Morocco to the north, Algeria to the North-East and Mauritania to the South and South-East. Western Sahara is classed by the United Nations as a Non-Self-Governing Territory, and remains as the last colony in Africa on the agenda of the UN General Assembly Special Committee on Decolonization.

Western Sahara was a Spanish colony from 1884 to 1975, when it was informally referred to as "Spanish Sahara". In 1975, under international pressure for decolonization, Spain withdrew from the territory, and secretly signed the Madrid Agreement, purporting to grant territorial control of Western Sahara to Morocco and Mauritania. A 1975 ruling of the International Court of Justice declared that neither Morocco nor Mauritania had legitimate claims to sovereignty over Western Sahara and that the indigenous 'Saharawi' people must be granted their right to self-determination.

The Frente POLISARIO (the Saharawi liberation movement) unilaterally proclaimed a Sahrawi Arab Democratic Republic (SADR) in February 1976, and engaged in a war against both Morocco and Mauritania, eventually forcing Mauritania to withdraw its claims on the territory. Mauritania recognised the SADR as the legitimate sovereign authority in Western Sahara in 1979. As Morocco forcefully annexed greater portions of Western Sahara, Algeria allowed refugees to settle in the desert near its south-western town of Tindouf.

An armed conflict between the POLISARIO and Morocco continued until 1991, when a ceasefire was brokered on the promise that a referendum on independence would be held soon after, to be carried out by the UN Mission for a referendum on the Western Sahara (MINURSO) pursuant to UN Security Council resolutions 658 (1990) and 690 (1991). Persistent Moroccan objections to UN efforts to establish an electoral roll prevented the referendum from going ahead, and several UN diplomats resigned in frustration at unacceptable Moroccan interference in all aspects of the

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UN's work. Seventeen years later, Morocco continues to obstruct efforts to hold the referendum, while a generation of Saharawi refugees has grown up in camps in Algeria.

The current political situation

The Saharawi Arab Democratic Republic has been recognised by more than 80 countries, and is a full founding member of the African Union. No country or international organisation recognises Moroccan sovereignty over Western Sahara. Meanwhile, Morocco continues to exploit the territory's natural resources in violation of international law.

UN-mediated efforts to find a solution remain deadlocked. A plan developed by former US Secretary of State James Baker and endorsed by the UN Security Council in 2003 was accepted in good faith as a compromise by the POLISARIO, but came to nothing when Morocco rejected the effort outright. Most recently, a series of UN-led talks in 2007 and 2008 between the POLISARIO and Morocco have failed to produce a breakthrough. UN Secretary-General Ban Ki-moon announced on 7 January 2009 his intention to appoint former US Ambassador to Algeria and Syria, Christopher Ross, as his new Personal Envoy on Western Sahara, with responsibility for facilitating a new round of negotiations between the parties.

In the meantime, there are continued and systematic human rights abuses in the occupied territory. A 2006 report by the Office of the UN High Commissioner for Human Rights (OHCHR) documented Morocco's excessive use of force against peaceful Saharawi demonstrators, along with incidents of arbitrary arrest, harassment, and intimidation of human rights activists. While the report has not yet been made public, it found that almost all human rights violations in the occupied territory stem from the non-implementation of the fundamental right to self-determination. These findings were confirmed by a similarly critical report by Human Rights Watch, published in December 2008. Both reports recommended that the UN Security Council expand the mandate of MINURSO to include a human rights monitoring component, as is the case for all other UN peacekeeping missions.

Natural resource issues

The natural resources of Western Sahara – particularly phosphates and offshore fisheries – continue to be pillaged by Morocco in violation of international law, to the tune of at least US\$2 billion annually (see <http://www.wsrw.org> for more information). Some estimates put this figure much higher.

The awarding by Morocco of oil and gas exploration licenses in Western Sahara to Kerr McGee and Total in 2001 was condemned by the SADR, and triggered a request by the UN Security Council for a legal opinion by then-UN Legal Counsel Mr Hans Corell (Sweden). The opinion, issued in January 2002, found that oil exploration and exploitation activities in “disregard of the interests and wishes of the people of Western Sahara” violate international law applicable to Non-Self-Governing Territories.¹ Total and Kerr McGee withdrew from the territory in 2004 and

¹ UN Doc. S/2002/161 of 29 January 2002.

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2005 respectively, and a number of other operators have indicated they will not become involved in the territory without SADR permission.

Corell stated at a recent international conference² that these same legal principles apply in respect of fisheries activities, and confirmed the illegality of the 2005 EU-Morocco Fisheries Partnership Agreement under which EU-flagged vessels (mainly Spanish) fish off the Western Saharan coastline. On this issue, Corell said:

*“As a European, I feel embarrassed. Surely, one would expect Europe and the European Commission – of all – to set an example by applying the highest possible international legal standards in matters of this nature”.*³

² Conference on Multilateralism and International Law with Western Sahara as a Case Study, hosted by the South African Department of Foreign Affairs and the University of Pretoria, held in Pretoria, South Africa, 4 to 5 December 2008.

³ Ambassador Hans Corell, *The legality of exploring and exploiting natural resources in Western Sahara*, address to the Conference on Multilateralism and International Law with Western Sahara as a Case Study, hosted by the South African Department of Foreign Affairs and the University of Pretoria, held in Pretoria, South Africa, 4 to 5 December 2008, available at:
<http://www.havc.se/res/SelectedMaterial/20081205pretoriawesternsahara1.pdf>

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